

§ 31.3402(n)-1

26 CFR Ch. I (4-1-14 Edition)

Example 1. Employee A has an estimated net loss from a partnership of \$2,000 which would be reported on Schedule E. Employee A is not required to make any payments of estimated tax. Employee A may take her \$2,000 partnership loss into consideration in determining the number of withholding allowances to which she is entitled in accordance with the tables and instructions on Form W-4.

Example 2. Employee B has an estimated net loss from a business of \$3,000 which would be reported on Schedule C. Employee B would also otherwise be required to make payments of estimated tax on income of \$3,000. Employee B may not take his business loss into consideration in determining the number of withholding allowances to which he is entitled in accordance with the tables and instructions on Form W-4.

Example 3. Employee C has an estimated net loss from a farm of \$5,000 which would be reported on Schedule F. Employee C would also otherwise be required to make payments of estimated tax on income of \$4,000. Employee C may only take her farm loss into consideration to the extent of \$1,000 (\$5,000-4,000) in determining the number of withholding allowances to which she is entitled in accordance with the tables and instructions on Form W-4.

(f) *Special rules*—(1) *Married individuals.* (i) Except as provided in subdivision (ii) of this subparagraph, a husband and wife shall determine the number of withholding allowances to which they are entitled under section 3402(m) on the basis of their combined wages and allowable items. The withholding allowances to which a husband and wife are entitled may be claimed by the husband, by the wife, or they may be allocated between them. However, they may not both have withholding exemption certificates in effect claiming the same withholding allowance.

(ii) If a husband and wife filed separate income tax returns for the taxable year preceding the estimation year and reasonably expect to file separate returns for the estimation year, the husband and wife shall determine the number of withholding exemptions to which they are entitled under section 3402(m) on the basis of their individual wages and allowable items, and they shall be considered to be single for purposes of the tables on Form W-4.

(2) *Only one certificate to be in effect.* An employee who is entitled to one or more withholding allowances under section 3402(m) and who has, at the

same time, two or more employers, may claim such withholding allowance or allowances with only one of his employers.

(Secs. 3402(i) and (m) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 3402 (i) and (m), 95 Stat. 172, 184; 26 U.S.C. 7805, 68A Stat. 917))

[T.D. 7915, 48 FR 44075, Sept. 27, 1983]

§ 31.3402(n)-1 Employees incurring no income tax liability.

(a) *In general.* Notwithstanding any other provision of this subpart (except to the extent a payment of wages is subject to withholding under § 31.3402(g)-1(a)(2)), an employer shall not deduct and withhold any tax under chapter 24 upon a payment of wages made to an employee, if there is in effect with respect to the payment a withholding exemption certificate furnished to the employer by the employee which certifies that—

(1) The employee incurred no liability for income tax imposed under subtitle A of the Internal Revenue Code for his preceding taxable year; and

(2) The employee anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year.

(b) *Mandatory flat rate withholding.* To the extent wages are subject to income tax withholding under § 31.3402(g)-1(a)(2), such wages are subject to such income tax withholding regardless of whether a withholding exemption certificate under section 3402(n) and the regulations thereunder has been furnished to the employer.

(c) *Rules about withholding exemption certificates.* For rules relating to invalid withholding exemption certificates, see § 31.3402(f)(2)-1(e), and for rules relating to disregarding certain withholding exemption certificates on which an employee claims a complete exemption from withholding, see § 31.3402(f)(2)-1T(g).

(d) *Examples.* The following examples illustrate this section:

Example 1. Employee A, an unmarried, calendar-year basis taxpayer, files his income tax return for 2005 on April 10, 2006. A has adjusted gross income of \$5,000 and is not liable for any income tax. He had \$180 of income tax withheld during 2005. A anticipates that

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his gross income for 2006 will be approximately the same amount, and that he will not incur income tax liability for that year. On April 20, 2006, A commences employment and furnishes his employer a withholding exemption certificate certifying that he incurred no liability for income tax imposed under subtitle A for 2005, and that he anticipates that he will incur no liability for income tax imposed under subtitle A for 2006. A's employer shall not deduct and withhold on payments of wages made to A on or after April 20, 2006. Under § 31.3402(f)(4)-2(c), unless A furnishes a new withholding exemption certificate certifying the statements described in paragraph (a) of this section to his employer, his employer is required to deduct and withhold upon payments of wages to A made after February 15, 2007.

Example 2. Assume the facts are the same as in *Example 1* except that A had been employed by his employer prior to April 20, 2006, and had furnished his employer a withholding exemption certificate prior to furnishing the withholding exemption certificate certifying the statements described in paragraph (a) of this section on April 20, 2006. Under section 3402(f)(3)(B)(i), his employer would be required to give effect to the new withholding exemption certificate no later than the beginning of the first payroll period ending (or the first payment of wages made without regard to a payroll period) on or after May 20, 2006. However, under section 3402(f)(3)(B)(ii), his employer could, if it chose, make the new withholding exemption certificate effective with respect to any payment of wages made on or after April 20, 2006, and before the effective date mandated by section 3402(f)(3)(B)(i). Under § 31.3402(f)(4)-2(c), unless A furnishes a new withholding exemption certificate certifying the statements described in § 31.3402(n)-1(a) to his employer, his employer is required to deduct and withhold upon payments of wages to A made after February 15, 2007.

Example 3. Assume the facts are the same as in *Example 1* except that for 2005 A has taxable income of \$8,000, income tax liability of \$839, and income tax withheld of \$1,195. Although A received a refund of \$356 due to income tax withholding of \$1,195, he may not certify on his withholding exemption certificate that he incurred no liability for income tax imposed by subtitle A for 2005.

[T.D. 9276, 71 FR 42057, July 25, 2006]

§ 31.3402(o)-1 Extension of withholding to supplemental unemployment compensation benefits.

(a) *In general.* Withholding of income tax is required under section 3402(o) with respect to payments of supplemental unemployment compensation benefits made after December 31, 1970,

which are treated under paragraph (b)(14) of § 31.3401(a)-1 as if they were wages.

(b) *Withholding exemption certificates.* For purposes of section 3402(f) (2) and (3) and the regulations thereunder (relating to withholding exemption certificates), in the case of supplemental unemployment compensation benefits an employment relationship shall be considered to commence with either the date on which such benefits begin to accrue or January 1, 1971, whichever is later, and the withholding exemption certificate furnished the employer with respect to such commencement of employment shall be considered the first certificate furnished the employer. The withholding exemption certificate furnished by the employee to his former employer (with whom his employment has been involuntarily terminated, within the meaning of paragraph (b)(14)(ii) of § 31.3401(a)-1) shall be treated as meeting the requirements of section 3402(f)(2)(A) and the regulations thereunder if such former employer furnishes such certificate to the employee's current employer, as defined in paragraph (g) of § 31.340(d)-1, or if such former employer is the agent of such current employer with respect to the employee's withholding exemption certificate. However, the preceding sentence shall not be applicable if such employee furnishes a new withholding exemption certificate to such current employer (or his agent), provided that such withholding exemption certificate meets the requirements of section 3402(f)(2)(A) and the regulations thereunder. See the definitions of payroll period in paragraph (c) of § 31.3401(b)-1 and of employee in paragraph (g) of § 31.3401(c)-1.

[T.D. 7068, 35 FR 17329, Nov. 11, 1970, as amended by T.D. 7803, 47 FR 3546, Jan. 26, 1982]

§ 31.3402(o)-2 Extension of withholding to annuity payments if requested by payee.

(a) *In general.* Under section 3402(o) of the Internal Revenue Code of 1954 and this section, the payee (as defined in paragraph (g)(2) of this section) of an annuity (as defined in paragraph (g)(1) of this section) may request the payor (as defined in paragraph (g)(3) of this